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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

WAGNOL, INC.
ARABI, LOUISIANA

RESPONDENT

)
) DOCKET NUMBER
) FIFRA 06-2002-0331
)

) COMPLAINT
) AND
) NOTICE OF OPPORTUNITY
) FOR HEARING
)

I.

PRELIMINARY STATEMENT

This Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 1361(a). The Complainant is the Chief of the Pesticides Section, Multimedia Planning and Permitting Division, United States Environmental Protection Agency (EPA), Region 6, who is the person to whom the authority has been delegated to issue such Complaints in the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

The Complainant will show that Respondent, located in Arabi, Louisiana, has violated Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. § 167.85, in the following manner.

II.

ALLEGATIONS

1. Respondent is a corporation.
2. Respondent is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
3. Respondent operates a business at 139 Mehle Avenue, Arabi, Louisiana 70032.
4. The place identified in Paragraph 3 is an "establishment," as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.
5. The Respondent is a "producer," as that term is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.
6. During calendar year 2001, the Respondent's establishment was registered with EPA as a pesticide producing establishment, pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. § 167.20, Establishment Number 033912-LA-001.

III.

VIOLATION

COUNT I - FAILURE TO FILE PESTICIDE PRODUCTION REPORT

7. Paragraphs 1 through 6 above are realleged and incorporated by reference.

8. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating an establishment registered under that Section to inform the Administrator annually, as required by EPA regulations, of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides:

- A. which he is currently producing,
- B. which he has produced during the past year, and
- C. which he has sold or distributed during the past year.

9. 40 C.F.R. § 167.85 requires producers to file annual pesticide production reports, in accordance with the requirements described in paragraph 8 above, on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

10. The Respondent was required to file such annual pesticide production report for calendar year 2001.

11. The Respondent failed to file its annual pesticide production report for calendar year 2001, by March 1, 2002, as required by Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. § 167.85(d).

12. Therefore, Respondent violated Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. § 167.85 by failing to file its annual pesticide production report by March 1, 2002.

13. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L),

states that "It shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 [of FIFRA]."

14. Therefore, Respondent has violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by failing to file an annual pesticide production report by March 1, 2002, as required by Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. § 167.85.

15. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1):

any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$5,500 for each offense.

16. Respondent is a registrant, wholesaler, dealer, retailer or other distributor subject to the civil penalty provisions of Sections 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1).

IV.

PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1) authorizes EPA to assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of not more than FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500) for each offense

[increased from \$5,000 due to the Civil Penalty Adjustment Rule, 61 Fed. Reg. 69360 (December 31, 1996)]. Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4) requires EPA to consider the appropriateness of the proposed penalty to: (1) the size of the Respondent's business, (2) the effect upon Respondent's ability to continue in business, and (3) the gravity of the alleged violation. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)" dated July 2, 1990, a copy of which is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

The penalty was calculated as follows:

Gravity - Level 2 - Failure to Submit, or Submitted Notably Late, a Section 7 Pesticide Production Report

Size of Business - Level 1 - Over \$1,000,000

Proposed Penalty - **FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500)**

In determining the amount of the penalty, EPA is required to consider the size of the business of the person charged. The "Enforcement Response Policy for FIFRA" sets forth the following size-of-business gradations, based on gross annual sales:

Category 1 - over \$1,000,000

Category 2 - \$300,001 - \$1,000,000

Category 3 - \$0 - \$300,000

In the absence of specific information on your firm's size of business, as determined by gross annual sales, it has been assumed for purposes of this Complaint, that your firm is a Category 1 size of business.

Please be assured that if your firm has been placed in Category 1 incorrectly, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

V.

OPPORTUNITY TO REQUEST A HEARING

Where the Respondent: (1) contests any material fact upon which the Complaint is based or; (2) contends that the amount of the penalty proposed in the Complaint is inappropriate; or (3) contends that it is entitled to a judgment as a matter of law, the Respondent shall file a written Answer to the Complaint with the Regional Hearing Clerk within twenty (20) days after the service of the Complaint.

The Answer shall clearly and directly admit, deny, or

explain each of the factual allegation contained in this Complaint with regard to which the Respondent has any knowledge. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Failure of the Respondent to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) a concise statement of the facts which you intend to place at issue in the hearing, and (3) whether a hearing is requested. A hearing upon the issues raised by the Complaint and Answer shall be held upon request of the Respondent in the Answer.

The hearing, if requested, will be conducted in accordance with the provisions of the Administrative Procedures Act (5 U.S.C. § 551 et seq.) and the Consolidated Rules of Practice codified at 40 C.F.R. Part 22. A copy of these Rules is enclosed. Respondent may retain counsel to represent it at the hearing.

The Regional Hearing Clerk's address is:

Regional Hearing Clerk (6RC-HO)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

A copy of this Answer shall also be sent to James W. Redd, Jr., Case Preparation Officer, Pesticides Section (6PD-P), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

You are further informed that the Consolidated Rules of Practice prohibit an ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decisions of the case, after the Complaint is filed.

VI.

DEFAULT ORDER

If the Respondent fails to file an Answer within twenty (20) days after the filing of the Complaint, it may be found to be in default pursuant to 40 C.F.R. § 22.17. For the purposes of this action, default by the Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of your right to a hearing under Section 14(a)(3) of FIFRA, 7 U.S.C. § 1361(a)(3). The proposed penalty shall become due and payable by the Respondent, without further proceedings, sixty (60) days after

issuance of a Final Order upon Default.

VII.

SETTLEMENT CONFERENCE

Whether or not the Respondent requests a hearing, it may confer with the Complainant concerning settlement. The EPA encourages settlement consistent with the provisions and objectives of FIFRA and the applicable regulations. A request for a settlement conference does not extend the twenty (20) day period during which the written Answer and a Request for Hearing must be submitted. The settlement conference procedure may be pursued as an alternative to, and simultaneous with, the formal hearing procedures. The Respondent may appear at the settlement conference and/or be represented by counsel.

Any settlement reached by the parties shall be finalized upon the issuance of a written Consent Agreement and Consent Order by the Regional Administrator, EPA Region 6, in accordance with 40 C.F.R. § 22.18. The issuance of a Consent Agreement and Consent Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

To explore the possibility of settlement in this matter,
address your correspondence to James W. Redd, Jr., Case
Preparation Officer, Pesticides Section (6PD-P), Multimedia
Planning and Permitting Division, U.S. Environmental Protection
Agency - Region 6, 1445 Ross Avenue, Dallas, Texas, 75202-2733,
or by telephone call (214) 665-7560.

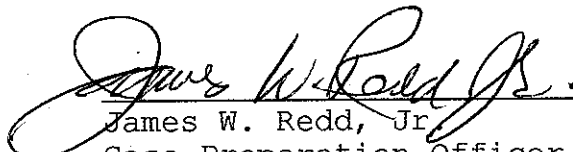
Date: 4/29/02

Greg Weiler for
Van Kozak, Chief
Pesticides Section (6PD-P)
Multimedia Planning and Permitting
Division
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 665-7563

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April,
2002, the original of the foregoing Complaint and Notice of
Opportunity for Hearing (Complaint) was hand delivered to the
Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue,
Dallas, Texas 75202-2733, and that a true and correct copy of the
Complaint, the Consolidated Rules of Practice, and the
Enforcement Response Policy for the Federal Insecticide,
Fungicide, and Rodenticide Act (FIFRA) dated July 2, 1990, were
placed in the United States Mail, certified mail, return receipt
requested, 70000520002225581508 addressed to the following:

James F. Fontenelle
President
Wagnol, Inc.
86 Carolyn CT
Arabi, Louisiana 70032


James W. Redd, Jr.
Case Preparation Officer

FROM : TROPICAL TRADING COMPANY INC. FAX NO. : 504 271 2224
May. 15 2002 10:18AM P2

May 15, 2002

James W. Redd, Jr.
Pesticides Section (6PD-P)
U.S. Environmental protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

02 MAY 15 PM 12:46
REGIONAL HEARING CLERK
EPA REGION VI

FILED

Dear Sir,

We purchased Wagnol Inc. in June 2000 and have not produced any pesticides products to date. Please inactivate our EPA EST. NO. 33912-LA-01 as I do not plan to produce any product at this time. I may be contacted by Fax/Phone (504) 271-2224.

Sincerely,



James F. Fontenelle

President

Wagnol, Inc.

86 Carolyn Court

Arabi, Louisiana 70032

RECEIVED

MAY 15 2002

Pesticide Section
EPA Dallas, TX

FAX COVER SHEET

DATE 5/15/02 TIME 10:10 A.M.TO JAMES REED JR.EPADallas TX.PLEASE FIND ATTACHED HERewith 2 PAGES, INCLUDING COVER PAGE.PLEASE DELIVER IMMEDIATELY TO: MR. REED JR.SENT BY: JAMES ROXBOROUGHCOMMENTS: RE: WAGNER INCEPA EST NO. 33912-LA-01

IF YOU SHOULD HAVE ANY PROBLEMS IN RECEIVING THIS TRANSMISSION, OR
IF YOU ARE MISSING ANY PAGES, PLEASE CALL: (504) 947-6284 AND ASK
FOR THE PERSON SENDING THE TRANSMISSION.

RECEIVED

MAY 15 2002

EPA Dallas, TX

FILED

02 JUN 16 PM 11:13

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

WAGNOL, INC.
ARABI, LOUISIANA

RESPONDENT

DOCKET NUMBER
FIFRA 06-2002-0331

CONSENT AGREEMENT
AND
CONSENT ORDER

PRELIMINARY STATEMENT

1. Complainant, the United States Environmental Protection Agency Region VI (EPA) and Respondent, by their undersigned representatives, hereby consent and agree as follows:

2. EPA initiated this proceeding for the assessment of civil penalties pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, 7 U.S.C. Section 1361(a) by issuance of an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) dated April 30, 2002.

3. The Complaint charged Respondent with violations of Section 7(c) of FIFRA, 7 U.S.C. Section 136e(c), Title 40 C.F.R. Section 167.85, failure to file an annual pesticide production report. A total civil penalty of \$5,500.00 was proposed in the Complaint.

4. Complainant and Respondent have agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Consent Order (hereinafter CACO) without further litigation is the most appropriate means of resolving this matter.

II.

AGREEMENT

5. Respondent hereby certifies to the best of its knowledge that, as of the date of execution of this CACO, that the Respondent's facility located at 139 Mehle Avenue, Arabi, Louisiana 70032, is in compliance with all applicable requirements of FIFRA Section 1361(a).

6. Respondent admits the jurisdictional allegations set forth in the Complaint.

7. Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or the Findings of Fact and Conclusions of Law contained in this CACO. The Complaint states a claim upon which relief can be granted.

8. Respondent explicitly waives its right to request a hearing on any issue of law or fact set forth in the Complaint and waives all defenses which have been raised or could have been raised to the claims set forth in the Complaint.

9. Respondent consents to the issuance of the CACO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out

in this CACO.

10. Compliance with all the terms and conditions of this CACO, shall result in full settlement and satisfaction of the Administrative Complaint and all claims and penalties alleged therein.

11. Each party to this action shall bear its own costs and attorney fees.

12. Except as specifically provided in this CACO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CACO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. Respondent is a corporation.

14. Respondent is a "person" as defined by Section 2(s), 7 U.S.C. Section 136(s).

15. Respondent's business is an "establishment," as that term is defined in Section 2(dd) of FIFRA, 7 U.S.C. Section 136(dd), and 40 C.F.R. Section 167.3.

16. Respondent is a "producer," as that term is defined by Section 2(w) of FIFRA, 7 U.S.C. Section 136(w), and 40 C.F.R. Section 167.3.

17. During calendar year 2001, the Respondent's establishment was registered with EPA as a pesticide producing establishment, pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, and Title 40 C.F.R. § 167.20, Establishment Number 033912-LA-001.

18. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating an establishment registered under that section to inform the Administrator annually, as required by EPA regulations, of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides:

- A. which he is currently producing;
- B. which he has produced during the past year; and
- C. which he has sold or distributed during the past year.

19. Title 40 C.F.R. § 167.85 requires producers to file annual pesticide production reports, in accordance with the requirements described in paragraph 19 above, on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

20. The Respondent was required to file an annual pesticide production report, such as the one described in paragraph 19, for calendar year 2001.

21. The Respondent failed to file its annual pesticide production report for calendar year 2001, by March 1, 2002, as required by Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and Title 40 C.F.R. § 167.85(d).

22. Therefore, Respondent violated Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and Title 40 C.F.R. § 167.85 by failing to file its annual pesticide production report by March 1, 2002.

IV.

PARTIES BOUND

23. The provisions of this CACO shall apply to, and be binding upon, the parties to this action, their officers, directors, agents, servants, employees, attorneys, successors, and assigns. The undersigned representative of each party to this certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CACO and to execute and to legally bind that party to it.

IV.

PENALTY ORDER

24. Pursuant to the authority granted in Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), and upon consideration of the entire record, including consideration of: (1) the size of the Respondent's business; (2) the effect upon Respondent's ability to continue in business; (3) the gravity of the alleged violation; and EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)" dated July 2, 1990, it is **ORDERED** that the assessed civil penalty be **reduced to \$0 and the Establishment Number be inactivated.**


V.

COSTS

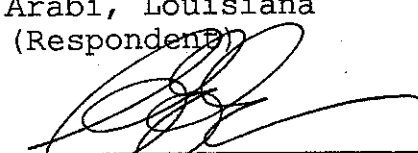
Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated pursuant to those Acts.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND CONSENT ORDER:

Date: MAY 30, 2002


James F. Fontenelle
President
Wagnol, Inc.
Arabi, Louisiana
(Respondent)

Date: 6/13/02


Carl E. Edlund, P.E.
Director
Multimedia Planning and
Permitting Division
U.S. Environmental Protection Agency
Region 6

This Consent Agreement and Consent Order is hereby adopted
and issued pursuant to Section 14(a) of FIFRA, 7 U.S.C.
§ 1361(a), and the Consolidated Rules of Practice Governing the
Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

It is so ORDERED. This Order shall become effective
immediately upon filing with the Regional Hearing Clerk.

Date: 6/14/02

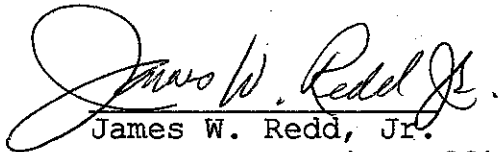

Gregg A. Cooke
Regional Administrator

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June,
2002, the original of the foregoing Consent Agreement and Consent
Order (CACO) was hand delivered to the Regional Hearing Clerk,
U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733,
and that a true and correct copy of the CACO was sent to the
following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 70000520002225568936

James F. Fontenelle
President
Wagnol, Inc.
86 Carolyn Ct.
Arabi, Louisiana 70032


James W. Redd, Jr.
Case Preparation Officer